

**PD-0578-18**  
**COURT OF CRIMINAL APPEALS**  
**OF TEXAS**

FILED  
COURT OF CRIMINAL APPEALS  
10/9/2018  
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**ROBVIA SIMPSON,**  
**Appellant**

**VS.**

**THE STATE OF TEXAS,**  
**Appellee**

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**On Petition for Review from the**  
**12<sup>th</sup> Court of Appeals, Tyler, Texas**  
**Cause No. 12-17-00080-CR**  
**And**  
**the 87<sup>th</sup> Judicial District Court**  
**of Anderson County, Texas**

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**STATE'S BRIEF**

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**IDENTITY OF PARTIES AND COUNSEL**

**JUDGE PRESIDING:**

THE HONORABLE DEBORAH OAKES EVANS

**DEFENDANT/APPELLANT:**

ROBVIA SIMPSON

**FOR THE DEFENDANT:**

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**FOR THE STATE:**

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## **STATEMENT REGARDING ORAL ARGUMENT**

Because the issue presented in this case – whether a plea of “true” to a new offense in a motion to adjudicate guilt or revoke probation is res judicata for the new offense – has not been addressed by this Court, we believe oral argument would be helpful to the court and the parties. The State of Texas therefore requests oral argument.

### **ISSUE PRESENTED**

Does *Doan* apply when a defendant enters plea of “true,” in a motion to proceed or probation revocation to new criminal offenses have no consequences for a defendant in cases arising from those new offenses?

### **STATEMENT OF THE CASE**

Appellant was charged by indictment with one count of assault of a public servant while exhibiting a deadly weapon and one count of aggravated assault with a deadly weapon, both offenses alleged to have occurred on the 21<sup>st</sup> day of September, 2015. (CR, P6) Appellant pled not guilty to the offenses. During the trial, it was shown that Appellant had committed these offenses while on deferred probation in Houston County for the offense of abandoning and endangering a child. Houston County alleged the same offenses that Appellant was on trial for in Anderson County in their motion to proceed with adjudication and guilt. (V4, State’s Exhibit 14) Appellant pled true to those allegations in Houston County; her probation was revoked; she was adjudicated guilty; and sentenced to 6 months in State Jail. (V4, State’s Exhibits 13, 12)

At trial in this case, Appellant attempted to raise the issue of self-defense. The court found that her raising of self-defense directly conflicted with her admission of guilt and sentence in Houston County to charges that were the same in allegation in all but a deadly weapon finding. The motion to proceed, her judicial confession to the same, and her judgement adjudicating her guilty were all admitted into evidence. (V4, State's Exhibits 14, 13, & 12) Self-defense was not made a part of the court's charge and Appellant was found guilty of the lesser included assault of a public servant in Count 1 and of aggravated assault with a deadly weapon in Count 2 and sentenced to 10 and 11 years in TDCJ in each count respectively.

The Reporter's Record will be referred to as "RR" unless otherwise noted. The Clerk's Record will be referred to as "CR." Appellant's Brief will be referred to as "AB" unless otherwise noted. Appellee is referred to as "State".

### **STATEMENT OF FACTS**

Appellant was charged by indictment with one count of assault of a public servant while exhibiting a deadly weapon and one count of aggravated

assault with a deadly weapon. These offenses were committed while Appellant was on felony deferred probation in Houston County. That county used the Anderson County offenses as violations of her deferred probation. (V4, State's Exhibit 14) As part of plea deal, Appellant pled true to those allegations in Houston County, her probation was revoked, she was adjudicated guilty, and sentenced to 6 months in State Jail. (V4, State's Exhibits 13, 12)

At trial in this cause, Appellant attempted to raise the issue of self-defense. The court found that her raising of self-defense directly conflicted with her admission of guilt in Houston County and, due to res judicata. Self-defense was not made a part of the court's charge and Appellant was found guilty of the lesser included assault of a public servant in Count 1 and of aggravated assault with a deadly weapon in Count 2 and sentenced to 10 and 11 years in TDCJ in each count respectively.

### **SUMMARY OF ARGUMENT**

In a legal landscape where *Doan* is the law, res judicata should preclude a defendant from raising an affirmative defense when they have pled true to that same offense in a previous probation revocation proceeding.

## **STATE’S ARGUMENT**

Res Judicata is the judicial principal that an issue between the same parties decided by a court of competent jurisdiction settles the matter. *Ex Parte Doan*, 369 S.W.3d 205 (Tex. Crim. App. 2012) stands for the fact that prosecutions from different counties are the same party for res judicata principals. *Id.* at 212-213. The State argues that should apply when the defendant enters a plea of “true” to criminal allegations in a motion to revoke in one county that are pending as an information or indictment in another county.

In this case Appellant was charged in a Motion to Proceed with Adjudication and Guilt in Houston County with a lesser included offense of the indictment in Anderson County. Count 2 of the indictment alleged:

that ROBVIA LENEICE SIMPSON, on or about the 21st day of September, 2015, and before the presentment of this indictment, in said County and State, did ... then and there intentionally, knowingly, recklessly cause bodily injury to Robert Simmons, Jr. by striking him with an ashtray, and the defendant did then and there use or exhibit a deadly weapon, to-wit: an ashtray, during commission of the assault. (V2, P104-106)



While the motion to proceed in Houston County alleged:

that the defendant, ROBVIA SIMPSON, in the State of Texas Anderson County and while during the term of said community supervision on or about the 21<sup>st</sup> day of September, 2015, did then and there intentionally, knowingly, and recklessly cause bodily injury to Robert Simmons by hitting him on the head with an ashtray. (V4, State's Exhibit 14)

Appellant, in the Houston County motion to proceed, entered a plea of true and signed a judicial confession to the same. (V4, State's Exhibit 13) Texas courts have already found that a plea of true, standing alone, is sufficient to support the allegations in a motion to revoke. *Roberson v. State*, 617 S.W.2d 708, 709 (Tex.Crim.App. 1981), *Moses v. State*, 590 S.W.2d 469 (Tex.Crim.App. 1979)

No issue of self-defense was raised and Appellant was adjudicated guilty of her original offense based upon her pleas of true. (V4, State's Exhibit 12) The only substantive issue in the case at bar and what Appellant plead "True" to was whether or not the ashtray used to strike the complainant was a deadly weapon.

In essence, she pled "true" to the lesser included offense of assault prior to the case at bar. If she committed the lesser assault, then she cannot be engaged in self-defense to the greater charge of aggravated

assault with a deadly weapon. Her judicial confession and plea of true to the offense in Houston County prevents her ability to raise self-defense in the instant case as any claim of self-defense would have absolved her of any assault charge and would, in essence, create paradoxical pleas and findings and place this case in direct opposition to the ruling in *Doan*.

The 12<sup>th</sup> Court relies upon the fact that cases have found that only a single finding on one violation can support a revocation. *See Bingham v. State*, 233 S.W.3d 118, 121 (Tex. App. – Texarkana 2007, no pet.) *see also Pierce v State*, 113 S.W.3d, 431, 436 (Tex. App. – Texarkana, pet. ref'd) However, those cases both involve defendants who pled “not true” and appealed findings of true on certain allegations. In this case, Simpson entered a plea of “true” to the offense as alleged, the court found that offense to be true, and entered those findings into a valid judgement that was in agreement with her plea of “true.”

**PRAYER**

**WHEREFORE** the Appellee prays that the Court upon consideration hereof reverse the judgement of the 12<sup>th</sup> Court of Appeals and affirm the judgement of the trial court.

Respectfully submitted by,



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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing petition for discretionary review for the State has been delivered via e-service to: Colin McFall and Steve Evans on this the 8<sup>th</sup> day of October, 2018 in accordance with the provisions of the Texas Rules of Criminal and Appellate Procedure.



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**SCOTT C. HOLDEN,**  
**1<sup>st</sup> Asst. Criminal District Attorney**

## **CERTIFICATE OF WORD COUNT**

I hereby certify that the entire word count of the State's brief is 1,757 words per the word count application of the word processing software that generated this petition.

A handwritten signature in black ink, reading "Scott C. Holden", written over a horizontal line.

**SCOTT C. HOLDEN,**  
**1<sup>st</sup> Asst. Criminal District Attorney**